Supreme Court, U.S.
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No. 97-6270

In the Supreme Court of the United States

OCTOBER TERM, 1997

GERALD R. CARON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the partial firearms disability that state law imposes on petitioner as a result of his prior state felony convictions means that those convictions continue to count for purposes of the federal firearms restrictions and enhanced sentencing provisions of 18 U.S.C. 922(g) and 924(e)(1), notwithstanding the restoration of petitioner's civil rights within the meaning of 18 U.S.C. 921(a)(20).

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OPINIONS BELOW

The order of the court of appeals (J.A. 52-54) is unreported. That court's opinion in *United States* v. *Estrella* (J.A. 57-70), on which it relied in deciding this case, is reported at 104 F.3d 3. Earlier opinions addressing different issues in this case are reported at 77 F.3d 1 (en banc) and 64 F.3d 713. The opinion of the district court (J.A. 9-51) is reported at 941 F. Supp. 238.

JURISDICTION

The judgment of the court of appeals was entered on May 9, 1997. On August 7, 1997, Justice Souter extended the time within which to file a petition for a

writ of certiorari to and including October 6, 1997. A suggestion for rehearing en banc, which the court of appeals treated as including a petition for rehearing, was denied on August 11, 1997. J.A. 55-56. The petition for a writ of certiorari was placed on the docket on October 8, 1997, and granted on January 9, 1998. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 921 of Title 18 provides in pertinent part as follows:

§ 921. Definitions

(a) As used in this chapter [18 U.S.C. 921-930]—

* * * * *

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device [as defined in Section 921(a)(4)]. Such term does not include an antique firearm.

* * * * *

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or

other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

2. Section 922 of Title 18 provides in pertinent part as follows:

§ 922. Unlawful Acts

* * * * *

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

* * * * *

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped

or transported in interstate or foreign commerce.

3. Section 924 of Title 18 provides in pertinent part as follows:

§ 924. Penalties

* * * * *

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

* * * * *

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year * * * that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious

potential risk of physical injury to another[.]

STATEMENT

Following a jury trial in the United States District Court for the District of Massachusetts, petitioner was convicted on four counts of possessing a firearm or ammunition after having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. 922(g). He was sentenced to 262 months' imprisonment under the enhanced sentencing provisions of 18 U.S.C. 924(e). A panel of the court of appeals affirmed, *United States* v. *Caron* (*Caron I*), 64 F.3d 713 (1st Cir. 1995), but the full court ordered en banc rehearing of a sentencing issue and ultimately remanded for resentencing. *United States* v. *Caron* (*Caron II*), 77 F.3d 1 (1st Cir.) (en banc), cert. denied, 116 S. Ct. 2569 (1996). On remand, the district court concluded that Section 924(e) did not apply, but it departed upward from the range otherwise applicable under the Sentencing Guidelines and imposed a sentence of 120 months' imprisonment, to be followed by three years of supervised release and accompanied by a special assessment of $200. In the judgment presently under review, the court of appeals reversed the district court's holding that Section 924(e) did not apply, and again remanded for resentencing.

1. Federal law prohibits any person "who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year" from possessing "any firearm" in or affecting commerce. 18 U.S.C. 922(g)(1). The term "firearm" is defined broadly to include "any weapon * * * which will or is designed to or may readily be converted to expel a

projectile by the action of an explosive." 18 U.S.C. 921(a)(3). The Armed Career Criminal Act, 18 U.S.C. 924(e)(1), requires a mandatory minimum sentence of 15 years' imprisonment for any person convicted under Section 922(g)(1) who has "three previous convictions * * * for a violent felony or a serious drug offense, or both, committed on occasions different from one another." For purposes of both Section 922(g)(1) and Section 924(e)(1) (at least as to violent felonies, see *Custis* v. *United States*, 511 U.S. 485, 491 (1994)), Section 921(a)(20) provides that:

> What constitutes a conviction * * * shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction * * *, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

2. At approximately 10:30 p.m. on the evening of July 14, 1993, petitioner, who was drunk, walked into the home of two acquaintances, Walter and Sally Miller, carrying a .22-caliber semi-automatic rifle loaded with a multiple-shot ammunition clip. Gov't C.A. App. 173, 177, 185, 188, 347, 351.[1] After brandishing the rifle, speaking abusively, specifically threatening Walter Miller, his daughter, and his three-year-

[1] "Gov't C.A. App." refers to the appendix filed by the government in connection with the original appellate proceedings (First Circuit No. 94-2026), which contains the bulk of the trial transcript, the transcript of the initial sentencing proceedings, and other record material.

old grandson, and demanding the repayment of money that he had lent the Millers, petitioner followed Sally Miller to the kitchen, where she offered him money from her purse. *Id.* at 347-348, 351-352. Petitioner eventually followed Miller to the rear porch of the house, where police officers who had responded to a call concerning the incident disarmed and arrested him. *Id.* at 172, 348-349, 352. The officers seized the rifle and 185 rounds of ammunition. J.A. 9 n.1.

Investigation by agents of the federal Bureau of Alcohol, Tobacco, and Firearms (BATF) revealed that petitioner had an extensive criminal record. Gov't C.A. App. 366. In addition to Massachusetts felony convictions for breaking and entering at night in 1958, 1959, and 1963, petitioner had been convicted of assault with intent to murder and attempted murder in California in 1970, and of federal firearms charges arising from the sale of a sawed-off shotgun to an undercover agent in 1977. *Ibid.*; J.A. 10 n.3; Pet. Br. 4; *Caron II*, 77 F.3d at 2; *Caron I*, 64 F.3d at 714 & n.1; *United States* v. *Caron*, 615 F.2d 920, 920 (1st Cir. 1980).

In September 1993, a BATF special agent called on petitioner at home to see if petitioner had additional firearms that his criminal record made it unlawful for him to possess. Gov't C.A. App. 363. Petitioner replied that he had only flintlock or other antique "black powder" weapons (which are generally exempt from federal firearms prohibitions, see 18 U.S.C. 921(a)(3) and (16)), and that he owned no "conventional" firearms. Gov't C.A. App. 240-241, 363. The agent advised petitioner that federal law barred him from possessing firearms because of his prior federal conviction, and that "state law [did not] supersede federal law" in that respect. *Id.* at 241. In December

1993, agents executed a search warrant at petitioner's house and seized six rifles and shotguns and 6,823 rounds of ammunition. *Id.* at 241-243; J.A. 9 n.1.

3. A federal jury found petitioner guilty of four counts of possessing a firearm or ammunition after having been convicted of a crime punishable by imprisonment for a term exceeding one year, in violation of 18 U.S.C. 922(g)(1). The district court then found that petitioner was subject to the enhanced sentencing provisions of Section 924(e)(1), because petitioner's three Massachusetts convictions for breaking and entering and his California conviction for assault and attempted murder all qualified as violent felony convictions. See J.A. 9-10; *Caron II*, 77 F.3d at 2.

Petitioner argued that his Massachusetts convictions should not be counted for enhancement purposes because his civil rights had been restored, with respect to those convictions, within the meaning of Section 921(a)(20). The district court rejected that argument on the ground that, under First Circuit precedent, a defendant's civil rights could not be restored for federal firearms purposes without some individualized action by state officials with regard to a particular defendant. Gov't C.A. App. 333-334. The court therefore sentenced petitioner as an armed career offender. *Ibid.*; see J.A. 9-10.

The court of appeals initially affirmed both petitioner's convictions and his sentence. *Caron I*, *supra*. The court granted a limited en banc rehearing, however, to consider two sentencing issues, including whether a defendant's civil rights may be restored, for purposes of Section 921(a)(20), by laws of general application, as well as by individualized state action. See *Caron II*, 77 F.3d at 1-2. Reversing its

previous position, the court held that no individualized consideration is required. *Id.* at 2. Because the district court's application of Section 924(e) had been based on the court of appeals' prior interpretation, the court vacated petitioner's sentence and remanded the case. *Id.* at 6. The court directed the district court to apply Section 921(a)(20) by determining whether petitioner's civil rights (in particular, his right to sit on a jury) had been "restored" under Massachusetts law, and, if so, whether the State had nonetheless "expressly provide[d]" that petitioner was not to carry firearms. *Ibid.*; see J.A. 11-12.

4. On remand, the district court held that petitioner's right to serve on juries had indeed been restored. J.A. 13-26. The court further held that Massachusetts law did not "expressly provide[]" that petitioner could not carry firearms, within the meaning of Section 921(a)(20). The court explained that Massachusetts permitted petitioner, if he obtained an appropriate identification card (which he had done), to possess firearms at his home or place of business and to carry rifles or shotguns on his person or in his car. J.A. 26-41. The court acknowledged that Massachusetts continued to bar petitioner from carrying a handgun on his person or in a car (J.A. 35-40), but it considered that fact irrelevant in a case in which petitioner was charged with possessing rifles and shotguns. The court therefore concluded that petitioner could not be given an enhanced sentence under the Armed Career Criminal Act. J.A. 41.[2] In impos-

[2] Because petitioner's civil rights had not been restored with respect to his federal convictions, the district court concluded that the status of petitioner's Massachusetts (or California) convictions affected only the application of Section 924(e)'s en-

ing a new sentence, however, the court departed upward from the Sentencing Guidelines range applicable to non-career offenders, and it sentenced petitioner to ten years' imprisonment. See J.A. 53; 10/15/96 Tr. 22-28.

5. In the decision presently under review, the court of appeals reversed. J.A. 52-54. The court relied on its intervening decision in *United States* v. *Estrella*, 104 F.3d 3 (1st Cir.), cert. denied, 117 S. Ct. 2494 (1997), reprinted at J.A. 57-70, which had "adopted an 'all or nothing' approach under which a conviction counts within the meaning of § 92[1](a)(20) if the state continues in any way to restrict significantly the ex-felon's right to ship, transport, possess, or receive firearms." J.A. 53. *Estrella* had further held that Massachusetts' ban on possession of handguns by felons outside their homes or businesses is a sufficiently substantial restriction on the possession of firearms to preserve the federal ban in its entirety. *Ibid.*[3] Rejecting petitioner's argument that his possession of a state firearms identification card distinguished him from the "ordinary Massachusetts felon" whose situation it had considered in *Estrella*, the

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hanced sentencing provisions, not the validity of his present conviction under Section 922(g)(1). J.A. 47-51. The court's discussion of the question presented in this case (J.A. 44-47) did not affect its conclusion concerning the validity of petitioner's conviction. See J.A. 47.

[3] The decision in *Estrella* explained that in Massachusetts, a felon who has been out of custody for more than five years may obtain a permit to possess a handgun in his residence or place of business, and to possess a rifle or long-barrel shotgun in any place. J.A. 65. No felon may, however, carry a handgun outside his home or business; purchase, rent, or lease a handgun; or sell, rent, or lease any firearm to another person. *Ibid.*

court once again vacated petitioner's sentence and remanded the case for resentencing. J.A. 53-54.

SUMMARY OF ARGUMENT

The "exemption" clause of 18 U.S.C. 921(a)(20) provides generally that a state "conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction" for purposes of the federal firearms prohibition in Section 922(g)(1) or the sentence enhancement provisions of Section 924(e). The exemption clause is subject, however, to a qualification: "unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." The court of appeals correctly held that, by reason of the "unless" clause, a state conviction "counts" under Section 921(a)(20) so long as the convicting State continues to impose restrictions on a felon's state firearms privileges.

The language of Section 921(a)(20) compels an "all-or-nothing" approach to that question. The condition expressed in the "unless" clause is met if a State continues to limit a felon's firearms privileges, on the basis of his state conviction, in any one of several listed ways (*i.e.*, shipping, transporting, possessing *or* receiving firearms). Moreover, because federal law defines the term "firearm" to mean "any" gun, silencer, or destructive device, the "unless" clause applies if a restoration of rights provides that the felon may not possess "any" such item. That construction could yield either of two "all-or-nothing" meanings: That the clause applies if the State imposes continuing restrictions applicable to "any" item that is a federal "firearm," or that it does *not* apply if there is

"any" such item that the State *does* permit the felon to possess. As petitioner concedes, however, only the first of those two meanings is plausible in the context of the statute as a whole.

Petitioner seeks to split the difference between these two possible readings, contending that a state felon who has had his rights restored has a "conviction" for federal purposes only "to the extent" that the State of conviction continues to restrict his firearms privileges. That approach does not comport with the statutory language. Nothing in the relevant provisions addressing what constitutes a prior "conviction" authorizes differentiation on the basis of the particular type of firearm involved in the present offense. That is especially clear where, as here, prior state convictions are used, not as the predicate for prosecution of the present federal firearms offense, but to determine eligibility for a sentence enhancement based on recidivism.

Petitioner argues that the "all-or-nothing" construction of the "unless" clause is inconsistent with the "main goal" or "theme" of the amendments that enacted it. The short answer to that contention is that the construction petitioner proposes is inconsistent with the language that Congress actually enacted. In any event, petitioner's general observations concerning the relevant statutory history provide no compelling support for his position on the issue in this case. Similarly, petitioner's policy arguments based on notice to felons concerning federal firearms restrictions, on ease of administration, and on the overall reasonableness of the statutory scheme are both misdirected and unpersuasive.

The policy justification for the all-or-nothing rule that Congress enacted is found in the fact that the

federal scheme begins with the presumption that a convicted felon should not and may not, as a matter of federal law, possess firearms. Section 921(a)(20) creates a limited exception to that principle where a State has chosen to treat one of its own convictions as having no continuing effect on the felon's general civil rights *and* no effect on his privilege to possess firearms in the same manner as other citizens of the State. Only in that limited situation, however, has Congress "promised to respect the states' decisions, and * * * not to burden those whom the states have exonerated." *United States* v. *Driscoll*, 970 F.2d 1472, 1480 (6th Cir. 1992), cert. denied, 506 U.S. 1083 (1993). There is nothing irrational about that "fairly straightforward federal plan." *Id.* at 1481.

ARGUMENT

A PRIOR CONVICTION REMAINS A "CONVICTION" FOR PURPOSES OF THE FEDERAL FIREARMS LAWS SO LONG AS THE CONVICTING JURISDICTION IMPOSES SIGNIFICANT RESTRICTIONS ON THE DEFENDANT'S POSSESSION OF FIREARMS

A. The Relevant Statutory Language Requires An "All-Or-Nothing" Approach

Section 921(a)(20) of Title 18 governs whether a prior state criminal adjudication counts as a prior "conviction" for purposes of the federal firearms laws. The Section's "choice-of-law" clause provides generally that "[w]hat constitutes a conviction * * * shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. 921(a)(20). The "exemption" clause then provides that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned

or has had civil rights restored shall *not* be considered a conviction." *Ibid.* (emphasis added). In *Beecham* v. *United States*, 511 U.S. 368 (1994), this Court held that the jurisdiction that rendered a conviction is the only jurisdiction that can expunge it or set it aside, or pardon or restore the civil rights of the convicted individual, for purposes of the exemption clause. 511 U.S. at 371. The exemption clause itself is, however, subject to a further qualification, not discussed in *Beecham*, that may be called the "unless" clause: "unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

In construing these provisions, the courts of appeals have generally concluded that a felon "has had civil rights restored" (by far the most common ground for invoking the exemption clause) if the convicting jurisdiction has restored his rights to vote, to seek and hold public office, and to sit on juries.[4] They have also agreed that, in applying both the exemption clause and the "unless" clause, a court should generally look to the whole law of the convicting jurisdiction, which defines the continuing effect of the conviction.[5] The lower courts have divided, however, over how the "unless" clause applies if the convicting jurisdiction, having restored a

[4] See, *e.g.*, *Caron II*, 77 F.3d at 2; *United States* v. *Indelicato*, 97 F.3d 627, 630-631 & n.3 (1st Cir. 1996), cert. denied, 117 S. Ct. 1013 (1997); *United States* v. *Cassidy*, 899 F.2d 543, 545-550 (6th Cir. 1990).

[5] See, *e.g.*, J.A. 64; *Caron II*, 77 F.3d at 2 & n.1 (citing cases); *United States* v. *Hall*, 20 F.3d 1066, 1069 (10th Cir. 1994); *Cassidy*, 899 F.2d at 549; see generally *Beecham*, 511 U.S. at 370-373.

felon's core civil rights, also permits him to enjoy some, but not all, of the firearms privileges it accords to non-felons. The court of appeals correctly resolved that question by holding that a state conviction "counts" under Section 921(a)(20) so long as the convicting State "continues in any way to restrict significantly the ex-felon's right to ship, transport, possess, or receive firearms." J.A. 53; see J.A. 64-68.[6]

1. The court of appeals' conclusion follows from the relevant statutory text. The "unless" clause provides that a state conviction for which the defendant "has had civil rights restored shall not be considered a conviction * * *, unless such * * * restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." The enumeration of various possible restrictions,

[6] Although different courts of appeals have relied on somewhat different rationales (see J.A. 66 & n.2), that conclusion is the majority view. See *United States* v. *Lee*, 72 F.3d 55, 57-58 (7th Cir. 1995); *United States* v. *Driscoll*, 970 F.2d 1472, 1480-1481 (6th Cir. 1992), cert. denied, 506 U.S. 1083 (1993); see also *United States* v. *Palazzi*, 115 F.3d 906, 908 (11th Cir. 1997); *United States* v. *Ellis*, 949 F.2d 952, 954-955 (8th Cir. 1991); cf. *United States* v. *Burns*, 934 F.2d 1157, 1160-1161 (10th Cir. 1991) (relying on state law prohibiting only possession of short-barrelled guns), cert. denied, 502 U.S. 1124 (1992). The Fourth and Ninth Circuits have held, to the contrary, that the "unless" clause applies only if a state felon whose civil rights have otherwise been restored continues to be subject to a state firearms disability that applies to the specific type of firearm involved in the federal offense. See *United States* v. *Qualls*, 108 F.3d 1019, 1023-1024, reh'g en banc granted, 122 F.3d 38 (9th Cir. 1997) (reargued Nov. 20, 1997); *United States* v. *Tomlinson*, 67 F.3d 508, 513 & n.8 (4th Cir. 1995); *United States* v. *Dahms*, 938 F.2d 131, 134-135 (9th Cir. 1991); see also *United States* v. *Wind*, 986 F.2d 1248, 1252 (8th Cir. 1993) (Magill & Hansen, JJ., concurring specially).

listed in the alternative, immediately suggests that the condition expressed in the "unless" clause is met if the State continues to limit a felon's firearms privileges in any of the listed ways. By parallel construction, the condition is met if the State imposes such limitations with respect to any "firearms."

That conclusion is reinforced by the fact that the statutory term "firearm" is defined in Section 921(a)(3) to mean "any weapon * * * which will or is designed to * * * expel a projectile by the action of an explosive," the frame of such a weapon, or "any" silencer or "destructive device." Thus, application of the "unless" clause depends on whether a State continues to give effect to its prior conviction, despite a subsequent pardon or restoration of civil rights, by prohibiting the felon from possessing "any" gun or other item that is a "firearm" within the broad federal statutory definition. If the State prohibits its felons, as felons, from possessing "any" such item, then the condition in the "unless" clause is satisfied, and the felon's state conviction continues to be "considered a conviction" under Section 921(a)(20).

It is grammatically possible to read the "unless" clause to say instead that its condition is not satisfied (so that a conviction does not count for federal purposes) if there is "any" federal "firearm" that the State *does* permit its felons to possess. The latter construction is implausible, however, because it would mean that any state authorization for a felon to possess any firearm, no matter how trivial the privilege in comparison to other continuing state firearms disabilities, would have the effect of completely vitiating the federal firearms prohibition, both in that

State and elsewhere.[7] Even petitioner decries that result as "absurd." Pet. Br. 17. The only alternative that is consistent with the statutory language is the all-or-nothing construction adopted by the court below.

2. The court's construction is also consistent with the overall structure of the interlocking statutory provisions at issue. See generally *Beecham*, 511 U.S. at 372 ("The plain meaning that we seek to discern is the plain meaning of the whole statute, not of isolated sentences."); *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) ("the meaning of statutory language, plain or not, depends on context"). Section 922(g) imposes a criminal prohibition, and Section 924(e) provides for sentence enhancement, based in part on the existence of one or more prior convictions. In recognition that such convictions may arise from a variety of jurisdictions, Section 921(a)(20) defers to each jurisdiction's own judgments as to what "constitutes a conviction" in the first place, and as to certain actions the jurisdiction itself may take to eliminate entirely any continuing effect of one of its convictions. *Beecham*, 511 U.S. at 372-373. That deference is limited, however, by the "unless" clause. Under that clause, a conviction continues to count for federal firearms purposes if the convicting jurisdic-

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[7] Similarly, the enumeration of possible restrictions—"may not ship, transport, possess, *or* receive firearms"—could be read grammatically to require that a State expressly forbid each of those activities in order to satisfy the "unless" clause. The more natural reading, however, is that the State's continued imposition of any one of the listed restrictions is sufficient. Parallel reasoning supports the conclusion that continued state restriction of one type of "firearms" is sufficient to trigger the "unless" clause.

tion, however else it may have recognized the rehabilitation of its felons, has declined to restore to them the firearms privileges that it accords to other citizens. Under those circumstances, the federal prohibition remains in full force.

As petitioner observes (Br. 14), the same analysis applies under the "unless" clause whether the state action at issue is restoration of general civil rights or any of the other actions specified in Section 921(a)(20), such as a pardon. Thus, a state pardon that authorized a felon to possess rifles and shotguns, but left intact a state bar on his possession of handguns (see Pet. Br. 14), would trigger application of the "unless" clause (so that the state conviction would continue to count for federal purposes) just as surely as a state statute embodying the same continuing restriction. That result does not, however, demonstrate the "invalidity" (*ibid.*) of the statutory interpretation we propose. It demonstrates only that, in accommodating state and federal interests in this area, Congress has chosen to disregard a prior state conviction only if the rendering State itself gives the conviction no continuing effect for purposes of, among other things, imposing firearms disabilities.

3. Petitioner seeks to split the difference between the two possible readings of the statutory language that we have identified. He contends (Br. 11-18) that a felon who has been pardoned or whose civil rights have been restored has a "conviction" under Section 921(a)(20) only "to the extent" that the State of conviction continues to restrict his access to firearms. Thus, he argues, his prior Massachusetts convictions should not be considered "convictions" under Section 921(a)(20), for purposes of this case, so long as his possession of the guns involved in the present offense

was permissible as a matter of Massachusetts law. As the court of appeals acknowledged in *Estrella* (J.A. 66), that approach would "respect[] the state's own choice[s]" with regard to all aspects of the firearms privileges to be accorded its felons. As the court also concluded (J.A. 67), however, it does not comport with the statutory language.

As we have discussed, Section 921(a)(20) defines what is a "conviction" cognizable under Section 922(g)(1) and Section 924(e)(1). Once the existence of such a "conviction" is established, Section 922(g)(1) prohibits the convict from possessing "any firearm," as that term is comprehensively defined by Section 921(a)(3); and Section 924(e)(1) requires enhanced sentences if the defendant "has three previous convictions * * * for a violent felony or a serious drug offense." Although Section 921(a)(20) refers to state law for what "constitutes a conviction," for subsequent state actions that remove any continuing effects of the conviction, and for the existence of continuing state limitations on "firearms" privileges, nothing in any of the relevant provisions authorizes differentiation on the basis of the particular *type* of firearm involved in any step of the analysis. To the contrary, as the Sixth Circuit explained in *United States* v. *Driscoll*,

> [u]nder federal law, a person is either treated as a convicted felon, and thus prohibited from carrying any firearms, or is treated as though he had a clean record, and thus allowed to carry all legal firearms. Certainly, state law is important, for Congress has decided that convicted felons in one state may be treated differently than convicted felons in another state. But the idea that Con-

> gress intended to treat various weapons differently within the same state simply contradicts the plain language of federal law.

970 F.2d 1472, 1480-1481 (1992), cert. denied, 506 U.S. 1083 (1993); see *United States* v. *Lee*, 72 F.3d 55, 57 (7th Cir. 1995).

The point is especially clear in cases, like this one, in which prior state convictions are used to enhance a defendant's sentence under Section 924(e), rather than to support his underlying conviction under Section 922(g). In a prosecution, the question is generally whether the defendant was federally prohibited, by virtue of a prior state conviction, from possessing the particular firearms with which he was found. In that context, it might have been plausible for Congress to distinguish (had it decided to do so) between guns the State itself would have let its felons possess and those that it would not. Where, however, as here (see note 2, *supra*), the issue is one of enhanced sentencing for recidivist violent felons, it is difficult to see why it should matter whether the State or States that rendered the *prior* convictions would have prohibited the defendant from possessing the particular type of firearm involved in the *present* offense.[8] Because Congress provided a single statutory inquiry for use in both prosecution and sentencing, it is

[8] For example, if petitioner had been arrested for possessing a pistol and a rifle and charged with two counts of violating Section 922(g)(1), he could have been validly convicted on both counts because of his prior federal felony conviction. It would be odd if he were then subject to a mandatory minimum under Section 924(e) on only one of the two counts, on the ground his three prior Massachusetts violent felony convictions were "convictions" for purposes of the pistol count but not for purposes of the rifle count.

reasonable to conclude that Congress intended the reading of the statute that makes more sense in both contexts: A prior conviction remains a "conviction," for federal firearms purposes, if the State that rendered it continues to use it as a basis for imposing an ongoing firearms disability.[9]

B. Nothing In The History Or Purpose Of The Relevant Provisions Would Justify A Different Construction

Petitioner argues (Br. 18-23) that the "all-or-nothing" construction of Section 921(a)(20) is "incompatible" with the "main goal" or "theme" of the amendments that enacted the present statutory language. The short answer to that contention is that the construction petitioner proposes is incompatible with the language of the relevant statutes, and "it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Servs., Inc.*, No. 96-568 (Mar. 4, 1998), slip op. 4. In any event, petitioner's general observations concerning the relevant statutory history provide no compelling support for his position on the issue in this case.

[9] Petitioner's ultimate reliance on the rule of lenity (Br. 17-18) is misplaced. As we have explained, the statutory language provides no basis for petitioner's ad hoc construction of Section 921(a)(20). Any ambiguity in the statutory text is only between the two possible all-or-nothing rules we have identified: That the unless clause applies if the convicting State restricts a felon's possession of any firearm, as we argue, or that it does not apply if the State allows the felon to possess any firearm. Lenity does not require adoption of the latter construction because, as petitioner concedes (Br. 17), it is implausible as an interpretation of the statute taken as a whole. The rule of lenity "cannot dictate an implausible interpretation of a statute." *Taylor* v. *United States*, 495 U.S. 575, 596 (1990).

It is true, for example, that Congress's 1986 amendments to Section 921(a)(20) were, in part, a response to rulings such as this Court's decision in *Dickerson* v. *New Banner Institute*, 460 U.S. 103 (1983), which held that federal law rather than state law applied to determine what constituted a prior "conviction" for purposes of the federal firearms laws. See, *e.g.*, *Beecham*, 511 U.S. at 374; S. Rep. No. 583, 98th Cong., 2d Sess. 7 & n.16 (1984). One goal of those amendments was "to defer substantially to state interests." Pet. Br. 19. That observation begs the question, however, of how substantially, and in what particular respects, Congress intended to defer. None of the statutory changes petitioner highlights (Br. 19-21) sheds any light on the specific statutory question at issue in this case. As petitioner tellingly concedes (Br. 21), Congress did *not* simply rewrite federal law to conform it to the various firearms prohibitions imposed by the States on their own felons. Petitioner cannot persuasively argue, based only on the general notion that Congress intended to accommodate state interests, that this Court should now rewrite the language Congress enacted, in order to reach a goal that would have been easily attained had Congress desired it.

As to the legislative history of the 1986 amendments, there is considerable force to the court of appeals' observation, in the context of the different issue considered in the first en banc decision in this case, that the history "is more conflicting than the [statutory] text is ambiguous." *Caron II*, 77 F.3d at 4. In discussing a predecessor to the bill finally enacted, the Senate Judiciary Committee expressed a general intention to "to provide support to Federal, State, and local law enforcement officials in their fight against

crime and violence," while avoiding "any undue or unnecessary Federal restrictions or burdens on *law-abiding* citizens with respect to the acquisition, possession, or use of firearms" in connection with any "lawful activity." S. Rep. No. 583, *supra*, at 1-2 (emphasis added); see also *id.* at 3; S. Rep. No. 476, 97th Cong., 2d Sess. 1-2 (1982); 131 Cong. Rec. 16,984 (1985) (statement of Sen. Hatch) (bill would "redirect[] Federal firearm enforcement toward criminal violators."). In discussing what became the choice-of-law clause, moreover, the Committee explained that the design of the statute was that the law of the convicting jurisdiction would determine whether the conviction would be given continuing effect, and thus whether the defendant would be subject to the federal firearms disability. See S. Rep. No. 583, *supra*, at 7; S. Rep. No. 476, *supra*, at 18.[10]

The brief passages from the relevant reports that address the exemption and "unless" clauses do not, however, address the specific question presented by this case, and they certainly do not "clearly indicate[]" (Pet. Br. 22-23) how Congress would have resolved it. See S. Rep. No. 583, *supra*, at 7; S. Rep.

[10] These passages include statements that, taken out of context, could appear to support petitioner's argument in this case. See, *e.g.*, S. Rep. No. 583, *supra*, at 7 ("Since the Federal prohibition is keyed to the state's conviction, state law should govern in these matters."); see also 131 Cong. Rec. 16,987 (1985) (statement of Sen. Hatch) (bill "grants authority to the jurisdiction (State) which prosecuted the individual to determine eligibility for firearm possession after a felony conviction or plea of guilty to a felony."). Petitioner prudently forgoes reliance on these passages (see Br. 22-23), because context makes clear that they refer to a State's ability, under the choice-of-law clause, to define what state adjudications are to be considered "convictions."

No. 476, *supra*, at 12, 18. They merely emphasize that Congress was concerned with giving state officials the "flexibility" to grant a pardon or expungement, or to provide for the restoration of rights, with respect to a state conviction, *without* thereby automatically removing the felon's federal firearms disability under the new scheme that Congress was enacting. The "unless" clause in Section 921(a)(20) accomplishes that result.

C. Petitioner's Policy Arguments Are Unpersuasive

Finally, petitioner advances several policy arguments to support his construction of the "unless" clause. Pet. Br. 23-31. As we have demonstrated, this case is resolved by the language of the relevant statutes; arguments concerning their wisdom would be best directed to Congress. Even if it were permissible to rewrite the statute on policy grounds, however, none of petitioner's arguments is persuasive.

1. Petitioner contends (Br. 23-25) that it would be "grossly unfair" to prosecute a felon under Section 922(g) (or, presumably, to enhance his sentence under Section 924(e) on the basis of prior convictions) if he acquired a particular firearm in reliance on state law. Normally, however, we expect citizens to know and observe their obligations under both federal and state law, even though the two commonly differ in small or large respects.

Moreover, as the *Estrella* court observed (J.A. 67), any protection afforded by petitioner's approach would be largely confined to defendants who commit state offenses in only one State, and remain in that State when they later obtain and possess firearms that might be the subject of federal prosecution or sentence enhancement. As suggested by the facts in this case and in *Beecham*, 511 U.S. at 370, that is not necessarily a typical scenario. In this case, for example, federal law barred petitioner from possessing firearms because of his prior federal conviction (and possibly because of his conviction in California), whatever guns Massachusetts may have permitted him to possess. See J.A. 47-51.

Petitioner accurately observes (Br. 24) that some felons might move to States whose laws allowed them to possess guns that were also authorized by the State of their conviction. He does not, however, explain why that possibility provides a sound basis for interpreting federal law. Nor does he suggest any reason that a felon sufficiently alert and conscientious to comply with state firearms law—whether that of the State of conviction, another State, or both—should not be equally capable of ascertaining and complying with federal firearms requirements. Finally, as petitioner acknowledges (Br. 25), construing Section 921(a)(20) as he suggests would do nothing to prevent mistaken reliance on state firearms rules by felons whose civil rights to vote, hold office or sit on a jury have not been restored. See, *e.g.*, *United States* v. *Woodall*, 120 F.3d 880, 881 (8th Cir. 1997) (restoration of "[t]he isolated right to possess firearms, in the absence of restoration of * * * core civil rights as well, does not immunize convicted felons" under Section 921(a)(20)); *United States* v. *Indelicato*, 97 F.3d 627, 629-630 (1st Cir. 1996), cert. denied, 117 S. Ct. 1013 (1997); *United States* v. *Thomas*, 991 F.2d 206, 214-215 (5th Cir.), cert. denied, 510 U.S. 1014 (1993). Thus, the statutory construction that petitioner proposes would do little to address his "notice" concerns.

2. Petitioner contends (Br. 26-27) that his interpretation of the statute would promote "ease of administration." As petitioner himself points out elsewhere (Br. 19-20), there is good evidence that Congress subordinated that goal to others when it drafted Section 921(a)(20). See also J.A. 67; *United States* v. *Dahms*, 938 F.2d 131, 134 (9th Cir. 1991). In any event, it is far from clear why the burden of determining whether a particular State's law imposes any continuing firearms disability on its felons would be materially greater than the burden of determining the same State's law with respect to the particular firearms at issue in a given case. Compare J.A. 33-39 (district court's consideration of Massachusetts's law). And, as the court below noted in *Estrella* (J.A. 66-67), any additional labor that a court of appeals might face in its first case involving the law of a particular State would be more than offset by the fact that the first decision on this issue would also be the last decision that would be necessary for that State, in the absence of some later change in state law.

3. Finally, petitioner argues (Br. 25-26, 27-31) that it "makes no sense" for Section 921(a)(20) to maintain a comprehensive federal firearms prohibition if a State has balanced relevant interests and decided, as a matter of its own law, to restore to its felons some firearms privileges but not others. As with petitioner's argument based on legislative history and purposes, this argument reduces to the contention that Congress should have passed a much simpler law, under which the federal prohibition would simply have mirrored what each State prohibits to its own felons. The argument also founders for the same fundamental reason: Congress could certainly have passed such a law, but that is not what it did.

In any event, the policy rationale for what Congress did do has been recognized by the courts of appeals. Rather than setting out simply to give each State's own firearms restrictions on its felons the added force of a parallel federal prohibition, Congress in 1986 began with a statute that imposed a flat federal ban on gun possession by convicted felons. It concluded that if the State that rendered a conviction chose to nullify that conviction completely, then that decision should be respected for purposes of federal law. In addition, Congress decided that if a State entirely restored a felon to his "full civil rights, including allowing [him] to possess firearms" to the same extent as other citizens, then it had "effectively vouched for its convicted felon[], declaring [him] free of stigma and worthy of equal treatment by the federal government." *United States* v. *Driscoll*, 970 F.2d at 1480. Under those limited circumstances, the federal government would "defer to [that] decision and allow such persons to possess firearms." *Ibid.* It is only under those circumstances, however, that Congress has "promised to respect the states' decisions, and * * * not to burden those whom the states have exonerated." *Ibid.* If a State instead continues to give effect to its own convictions by limiting either its felons' general civil rights or their firearms privileges, then the federal government maintains its "original presumption" that that State's felons, like federal felons, should be entirely prohibited from possessing firearms. *Ibid.*; J.A. 62-63, 67; *Indelicato*, 97 F.3d at 630; *Lee*, 72 F.3d at 57; *McGrath* v. *United States*, 60 F.3d 1005, 1007 (2d Cir. 1995); *United States* v. *Meeks*, 987 F.2d 575, 578 (9th Cir.), cert. denied, 510 U.S. 919 (1993).

Petitioner disputes the cogency of this rationale as a full explanation for the particular statutory scheme enacted by Congress (Pet. Br. 28-31), but that argument is largely beside the point. What the "fairly straightforward federal plan" (*Driscoll*, 970 F.2d at 1481) described above makes plain is that, contrary to petitioner's contention (Br. 25), there is nothing "irrational[]" about the all-or-nothing rule adopted by Congress in the "unless" clause of Section 921(a)(20). That being so, the statute must be applied in accordance with its terms. Compare *Beecham*, 511 U.S. at 374.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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